

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 04-80431-WRS

Chapter 11

LIFE SAFETY INC.,

Debtor

MEMORANDUM DECISION

This Chapter 11 case is before the Court upon the Debtor's Motion for Authority to Use Cash Collateral. (Doc. 26). Motions such as this must be made in accordance with Rule 9014. See, Rule 4001(b)(1), Fed. R. Bank. P. These kinds of motions initiate contested matters and must be served in accordance with Rule 7004. See, Rule 9014(b). The following entities must be served a motion to use cash collateral: (1) any entity which has an interest in the cash collateral; (2) the entities holding the twenty-largest unsecured claims. See, Rule 4001(b)(1).

The certificate of service attached to the Debtor's motion indicates that no attempt has been made to serve the holders of the twenty-largest unsecured claims. For this reason alone, the Court could deny the motion.

In addition, the Debtor's motion indicates that three entities have or may claim an interest in the cash collateral: (1) Supply Network, Inc.; (2) Farmers Merchant Bank; (3) the Internal Revenue Service. The Debtor has attempted service upon these three entities.

The certificate of service attached to the Debtor's motion indicates that service has been made by first-class mail upon John T. Piggins, a lawyer with his office in Grand Rapids, Michigan, and Clark R. Hammond, a lawyer whose office is in Birmingham, Alabama, both of

whom have filed notices of appearance on behalf of Supply Network, Inc.. See, Rule 2002(g), Fed. R. Bankr. P. (Docs. 19, 21). Rule 7004(b)(3) provides that service is made upon a corporation by “mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.” Examination of the certificate of service on file in this case indicates that service upon Supply Network, Inc. is insufficient.¹

The certificate of service further indicates that Arnold W. Umbach, Jr. has been served by first-class mail at his Post Office Box in Opelika, Alabama. Umbach is a lawyer in private practice who appears regularly in this Court, usually representing creditors. The record in this case does not indicate that he has entered an appearance on behalf of Farmers & Merchants Bank. Service of process upon a bank is made by certified mail upon an officer of the institution. Rule 7004(h), Fed. R. Bankr. P. The rule has an exception for attorneys of record, which does not apply here as Umbach has not, as of this time, entered an appearance on behalf of Farmers & Merchants Bank. Therefore, the Debtor has not properly served Farmers & Merchant’s Bank.

As a final matter, the Debtor’s motion indicates that the Internal Revenue Service, an agency of the United States, may claim a lien in the cash collateral. Service upon the United States is made by mailing a copy to the civil process clerk at the Office for the United States

¹ To be sure, Hammond and Piggins may well elect to waive formal service of process under Rule 7004(b)(3), upon their client, and the Court would not insist on formal service of process where a corporation was represented by counsel of record. However, as the Debtor has failed to properly effect service upon any of the other parties, the Court has elected to discuss service upon Viking Supply to make its discussion of service of process complete. Hammond and Piggins may elect to waive formal service of process at their discretion.

Attorney for the district in which the action is brought and a copy upon the Attorney General in Washington, DC. Therefore, the Debtor has not properly served the United States.

As the Debtor has failed to serve any of the necessary parties in accordance with the Federal Rules of Bankruptcy Procedure, the motion will be dismissed pursuant to a separate order which will be entered by this Court.

Done this 12th day of April, 2004.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Charles G. Reynolds Jr., Attorney for Debtor
John T. Piggins, Attorney for Viking
Clark R. Hammonds, Attorney for Viking
Patricia A. Conover, Attorney for IRS
Arnold W. Umbach Jr., Attorney for Farmers & Merchants Bank
Teresa R. Jacobs, Bankruptcy Administrator